THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No: 6241 of 1994

Between:

R.C.Bhaktavatsalam, S/o.Late Subbaiah.

..... PETITIONER

AND

The Girijan Co-operative Corporation Limited and others.

.....RESPONDENTS

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ORDER:

Questioning the action of the first respondent, in not promoting the petitioner to the post of Senior Manager with effect from 22-10-1987, as arbitrary and illegal, the present writ petition is filed. The petitioner seeks a consequential direction to the first respondent to promote him to the post of Senior Manager, with effect from 22-10-1987, giving him all consequential benefits and to fix his seniority among the Senior Managers placing him over and above respondents 2 to 6.

Facts, to the limited extent necessary for this writ petition, are that the petitioner was appointed as a Junior Manager in the Girijan Co-operative Corporation Limited, on 21-08-1977. Promotion from the post of Junior Manager is to the post of Senior Manager. According to the petitioner in the seniority list of Junior Managers, the petitioner was senior to respondents 2 to 6 and that he stood at Sl.No.18 and respondents 2 to 6 were at Sl.Nos.21, 22, 24 and 32 respectively. The grievance of the petitioner is that though he was entitled for promotion to the post of Senior Manager in the year 1987 itself, respondents 2 to 5 were promoted, vide Proceeding

dated 22-10-1987, and he was ignored for promotion on account of certain adverse remarks made during the year 1985. Consequent upon his representation, the first respondent, who is the competent authority, vide proceedings dated 25-12-1987, expunged the adverse remarks.

Sri S.Sudheep, learned counsel appearing on behalf of Sri K.Raghuveer Reddy, learned counsel for the petitioner, would submit that denial of promotion to the post of Senior Manager was on the basis of the adverse remarks, on these remarks being subsequently expunged, the petitioner would automatically be entitled to be promoted to the post of Senior Manager.

A counter affidavit is filed on behalf of the first respondent, wherein reference is made to Rule 11, Part-A of chapter-I of the Girijan Co-operative Corporation Limited Rules, which reads as under:

> "PROMOTIONS:
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> When suitable qualified candidates are available among the corporation employees their cases will be considered for promotion to higher-cadres. Such promotions shall be limited to the extent indicated against each cadre in these Rules at Appendix-A. All promotions will be made on grounds of merit and ability at the discretion of the competent authority. Other things being equal the seniority of an employee in the Grade shall be given due weight. Promotion cannot be claimed as a matter of right."

It is stated in the counter affidavit that the petitioner was denied promotion during 1987 as the committee found him not fit for promotion and that the committee had remarked that he should improve his performance for further consideration. It is admitted that the adverse remarks were expunged. It is however contended that these adverse remarks did not form the basis for denial of promotion to the petitioner and he was not given promotion as he was not fit for promotion. Reference is made to the fact that the petitioner was kept under suspension with effect from 23-09-1980

and he was found negligent in discharge of his duties causing theft of gum worth Rs.49,500/-, that he was awarded with punishment treating the suspension period undergone by him as substantive punishment vide proceeding dated 03-02-1983, and pursuant to the appeal preferred by him to the Board of Directors, the said order of punishment was modified treating the period of suspension, which he had undergone, as leave to which he was entitled to and that promotions are made only on merit and ability among the eligible candidates.

Sri N.Sreedhar Reddy, learned Standing Counsel for the respondent, would submit that since the adverse remarks do not form the basis for denying promotion to the petitioner and since promotions are effected on the basis of merit, merely because the petitioner was senior to the 2nd to 6th respondents, it did not entitle him to seek promotion to the higher post of Senior Manager. Learned counsel would submit that it is not for this court, under Article 226 of the Constitution of India, to sit in appeal over the decision of the Selection Committee and since on a comparative assessment of the merit of the petitioner and respondents 2 to 6, it was found that respondents 2 to 6 are more meritorious, no interference is called for. Learned counsel would contend that the petitioner has in any event retired from service in the year 2004.

Rule 11, as referred to above, provides that promotion shall be effected on the basis of merit and ability and that seniority would be given due weight, other things being equal. Since merit and ability are the criteria for promotion and it is only when they are equal, that seniority come into play, the petitioner cannot claim promotion solely on the basis of his seniority. Denial of promotion to the petitioner, in the facts and circumstances of the present case, does not call for interference. I see no reason to interfere with the order of the first respondent.

The writ petition is accordingly dismissed. No order as to costs.

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20-02-2006

Prv